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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 15th September 2014

No. 7284—IR(ID)-117/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd August 2014 in Industrial Dispute Case No. 17/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of Executive Engineer, Rural Works Division, Baripada, Mayurbhanj and its workman Shri Ratnakar Mohanta was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 17 OF 2013

Dated the 23rd August 2014

Present :

Shri B.C. Rath, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
The Executive Engineer,
Rural Works Division,
Baripada, Mayurbhanj.

.. First Party—Management

And

Its Workman
Shri Ratnakar Mohanta,
C/o Shri Girish Chandra Mohanta,
At Kainfulia, P.O. Bartana,
via Betnoti, Dist. Mayurbhanj

.. Second Party—Workman

Appearances :

Shri S.N. Behera, ex Engineer	. .	For the First Party Management
None	. .	For the Second Party Workman

AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act') have referred the following dispute for adjudication by this Court vide their Letter No. 1046—IR(ID)-117/2012-LESI., dated the 4th February 2013 :—

"Whether the termination of services of Shri Ratnakar Mohanta, NMR by the Executive Engineer, Rural Works Division, Baripada with effect from the 30th June 2007 is legal and/or justified ? If not, what relief Shri Mohanta is entitled to ?"

2. The case of the second party workman in brief is that he was engaged as an NMR/DLR under the first party management and was working in its R.W. Section, Badasahi since the 1st June 1990, where he continued till the 30th June 2007 without there being any interruption in his work. It is stated in the claim statement that his work was to assist the Supervisor in rural road works which was of unskilled category and he was receiving his wages on monthly basis. According to him, while working as such his service was terminated by the first party on the 30th June 2007 by way of refusal of employment and while doing so it has neither complied with the provisions of the Act nor the principles of natural justice, inasmuch as no notice pay and compensation was paid to him nor he was ever proceeded against for any misconduct during his continuance under the first party management. It is further alleged by the second party workman that workers juniors to him have been regularised in the employment and further new recruitments have been made ignoring his case. With the aforesaid averments the second party workman has challenged the action of the first party management to be illegal and unjustified and claimed for his reinstatement in service with back wages.

3. The first party management in its written statement has challenged the maintainability of the reference on the ground of delay of 14 years by the workman in raising the dispute. Admitting about the engagement of the workman under it from October 1993 to May 1994, the first party management has taken the stand that from June 1994 onwards the workman did not turn up to duty for which it was presumed that he had left the job on his own accord. Further, the first party management while admitting about regularisation of other DLR workers who have completed ten years of service under it, has stated that as the second party workman has voluntarily abandoned his job after having worked for less than a year his case could not be considered for regularisation. In the aforesaid background, the management has prayed to answer the reference in the negative as against the second party workman.

4. On the basis of the aforesaid pleadings, the following issues have been framed by this Tribunal :—

ISSUES

- (i) “Whether the termination of services of Shri Ratnakar Mohanta, NMR by the Executive Engineer, Rural Works Division, Baripada with effect from the 30th June 2007 is legal and/or justified ?
- (ii) If not, what relief Shri Mohanta is entitled to ?”

5. In course of heraring the second party workman remained absent and did not take any steps for which he was set *ex parte* vide Order No. 19, dated the 5th August 2014. The first party management, on the other hand, examined Shri Saroj Kumar Parida, its Assistant Executive Engineer and proved documents marked Exts. A to A/8 and B & C.

6. In this proceeding the second party workman has asserted that he was employed under the first party management for a continuous period of about seventeen years from the 1st June 1990 to the 30th June 2007. Except taking such a stand in his claim statement he has not come forward to depose in the Court nor he has filed any documents in support of such stand. It is well settled in a catena of decisions of the Hon'ble Supreme Court that to claim protection of the provisions of Section 25-F of the Act, the burden rests on the claimant to prove that he has rendered continuous service for more than 240 days under his employer. In this connection, it is profitable to refer to a decision of the Hon'ble Supreme Court in the case of R.M. Yellatty Vrs. Assistant Executive Engineer, reported in (2006) 1 SCC 106 may be seen wherein it has been observed as follows :—

“However, applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earlier there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus, in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.”

In the case in hand, the second party workman having abstained himself from the proceeding has not adduced any oral or documentary evidence in support of his plea that he had served under the management for a continuous period of seventeen years. The first party management, on the other hand, has adduced evidence through M.W. No. 1, who has stated with reference to Exts. A to A/8, the copies of the Imprest Cash Account, that the second party workman was working under it

as an NMR/DLR for the period from October, 1993 to May, 1994 and thereafter he remained absent from duty. He has further stated that the second party workman had never put forth any claim for his employment under the management. According to him, the second party workman having voluntarily abandoned his employment with effect from the June 1994, he has no claim against the first party management.

7. There is nothing on record to discard such uncontroverted evidence of M.W.No. 1 according to whom the second party workman remained absent from his duty from 1st June, 1994 and as he abandoned his employment voluntarily, there was no scope of refusal of employment to him. If such uncontroverted evidence is taken into consideration along with the settled principles of the Hon'ble Apex Court in the case of *Vijay S. Sathaye Vrs. Indian Airlines Ltd. And others*, reported in 2013 (139)FLR 988 and in the case of *Chief Engineer (Construction) Vrs. Keshava Rao (D) by LRs.*, reported in 2005(105) FLR 378, the second party workman having remained unauthorisedly absent for a long period and he having failed to take any initiation for his reinstatement on his plea of refusal of employment by the first party management it shall be presumed that the workman had voluntarily abandoned his service and as such, there was no need of issue of notice, charge sheet, etc. as well as there is no need of compliance of the provisions of Section 25-F of the Act.

8. In the above facts and circumstances and keeping in view the principles enunciated by the Hon'ble Apex Court in the cases under reference and the uncontroverted evidence of the first party management and more particularly in absence of any evidence on the part of the second party workman, this Tribunal has no other option than to hold that the second party workman has failed to establish his claim against the first party management and consequently he is not entitled to any relief in the present proceeding.

The reference is answered accordingly

Dictated and corrected by me.

B. C. RATH

23-8-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

B. C. RATH

23-8-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

M. NAYAK

Under-Secretary to Government